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August 5, 2011

VIA ECF

Hon. Arlene R. Lindsay
United States Magistrate Judge
United States District Court
100 Federal Plaza, Room 814
Central Islip, NY 11722

Re: *CARCO Group, Inc. and PONJEB V, LLC v. Drew Maconachy*
05-CV-6038 (ARL) (E.D.N.Y.)

Dear Magistrate Judge Lindsay:

This letter asks the Court to stay further proceedings on any determination of an attorneys fee award to CARCO pending resolution of an anticipated appeal of the Court's July 19, 2011 Memorandum and Order. Dkt. 191. Maconachy believes that the Court's findings of causation and determination of damages are in error and intends to pursue an appeal of these errors. An appellate resolution of the causation issue in Maconachy's favor would eliminate any award of attorneys' fees – as damages is an essential element of CARCO's contract claim. Separately, as set forth in Maconachy's Rule 52(b) and 59(e) Motion (filed simultaneously herewith), the award calculation is itself incorrect for various other reasons. Resolution of this motion in Maconachy's favor will result in a complete offset of CARCO's awarded damages, also eliminating an award of attorneys' fees. Further proceedings on the attorneys' fees determination are therefore premature.

Further attorneys' fees proceedings at this juncture will likely result in the waste of scarce judicial resources to determine reasonable fees before it has been determined that CARCO proved the final element of its contract breach claim. Moreover, CARCO is seeking over \$5 million in attorneys' fees on the \$571,506.85 breach of contract award and has submitted hundreds of pages of affidavits and fee details for multiple attorney and other professional firms – all of which will require detailed scrutiny to determine the reasonableness of CARCO's submitted fees. As noted by CARCO, "the most critical factor' in a district court's determination of what constitutes reasonable attorney's fees in a given case 'is the degree of success obtained' by the plaintiff." Citing *Barfield*

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v. New York City Health and Hosps. Corp., 537 F.3d 132, 152 (2nd Cir. 2008) (quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)). Dkt. 62 at 2. CARCO's success or failure will not be known until after the Court's resolution of the pending Rule 52(b) and 59(e) Motion and after the second appeal.

Accordingly, Maconachy respectfully requests that this Court stay further proceedings on attorneys' fees until after the second appeal has been completed.

In the alternative, Maconachy seeks an extension of time until September 19, 2011 to file its objections to CARCO's fee petition. This extension is necessary to adequately respond to the many hundreds of pages submitted by CARCO in two separate filings (Dkt. 62 to 62-29; Dkt. 192 to 192-17) in support of its \$5 million fee petition.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP

s/ Gary A. Ahrens

Gary A. Ahrens

GAA:tlb

cc: All Counsel of Record (via ECF)

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